

November 12, 1999

NEGOTIATING NON-COMPETITIVE CLINICAL SERVICES CONTRACTS

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides additional guidance regarding sole source (non-competitive) procurements from affiliated medical schools, their medical practice groups, and other qualified sources.

2. BACKGROUND

a. On October 30, 1998, the Department of Veterans Affairs (VA) Office of Inspector General (OIG) issued a report titled "Evaluation of VA Medical Center Clinical Services Contracts with Medical Schools" (Report No. 9R8-E11-008). The principal finding during this evaluation was that "VA medical centers need additional guidance on using commercial items (CI) contracts to purchase clinical services."

b. Section 301 of Public Law 104-262, dated October 9, 1996, gave VHA additional flexibility in the way we buy clinical services from affiliated medical schools, including the use of CI contracts. Because CI contracts do not require certified cost or pricing data to support proposed sale prices, the OIG correctly pointed out that there is a risk that VA medical centers could overpay for services.

3. POLICY

a. It is VHA policy that the preferred way of purchasing clinical services is through the use of procedure-based contracts, with Medicare rates the benchmark for procedure prices. However, in some limited circumstances, it may be more appropriate to price CI contracts based on an hourly rate (such as when purchasing emergency room coverage for a specified period of time), or to price the contract based on some specified deliverable (such as completion of a quality assurance record review). Medical center Directors have the responsibility to ensure that contracting officers obtain sufficient information to insure that prices paid on noncompetitive CI contracts are reasonable.

b. The delegation of contract review and approval authority to field facilities for non-competitive contracts valued below \$500,000 and for competitive contracts valued below \$1,500,000 remains in effect. All other proposed contracts must be sent to the VHA Office of Finance, Sharing and Purchasing Office (175). The Office of Finance coordinates the VHA Headquarters' technical, legal, and program office reviews and approvals.

4. ACTION

a. When negotiating CI contracts with affiliates, contracting officers need to thoroughly research market prices from sources such as Medicare fee schedules and professional society compensation survey information. The results of this market survey must be included in the contract folder to support the outcome of the negotiation and the rationale for actions taken.

b. While Federal Acquisition Regulations (FAR) 15.403-1(c)(3) exempt commercial items from the requirement for certified cost or pricing data, the Contracting Office should ask for sufficient information to determine price reasonableness. Cost or pricing data may be requested,

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but a certification of the data may not be requested from the vendor. Information to determine price reasonableness may include actual salary, benefits, supply costs, and a reasonable amount of overhead and profit. This information should be subject to cost analysis per FAR 15-404-1(a)(4). Contracting officers should obtain cost or pricing data (not certified) when awarding a sole source contract to an affiliate.

c. When it is determined that the cost data is inadequate to determine a fair and reasonable price, contracting officers should request an audit. For all sole source contracts whose value is \$500,000, or greater, a pre-award audit is required.

d. If field-pricing assistance is required, the audit request should be sent to the following address via express mail or facsimile:

Department of Veterans Affairs
Office of Inspector General
Contract Review and Evaluation Division (52C)
801 Eye Street, NW; Room 1171F
Washington, DC 20001
Facsimile: (202) 565-6512

NOTE: *The audit may only tell that, in fact, the information provided by the affiliate is the true cost of the services it intends to sell to VA. That is why contracting officers must thoroughly research market prices as discussed.*

5. REFERENCES

- a. FAR 15.403 and 15.404.
- b. Public Law 104-262, Section 301.
- c. OIG Report 9R8-E11-008.

6. RESPONSIBLE OFFICE: The VHA Office of Finance (17) is responsible for the contents of this Directive. Questions may be referred to the Sharing and Purchasing Office of the VHA Office of Finance, at (202) 273-8406, or by facsimile at (202) 273-9056.

7. RESCISSION: This VHA Directive will expire on November 30, 2004.

S/ by Frances Murphy, M.D. for
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Acting Under Secretary for Health

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